

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

MARK A. TORNELLO,

NOTICE OF MOTION

Plaintiff,

07 civ. 6697 (CLB)

-against-

COUNTY OF WESTCHESTER,

Defendant.

-----X

C O U N S E L O R S:

PLEASE TAKE NOTICE, that upon the annexed Declaration of Christie L. Magno, Assistant County Attorney, sworn to the 29th day of October, 2007, the accompanying Memorandum of Law and upon all the papers and proceedings heretofore had herein, defendant, the County of Westchester, will move this Court before the Honorable Charles L. Brient, United States District Judge, Southern District of New York, 300 Quarropas St., Room 275, White Plains, NY 10601, on the 7th day of December, 2007 at 10:00am, or as soon thereafter as counsel can be heard for an order pursuant to Rule 12(b) subdivision (6) of the Federal Rules of Civil Procedure dismissing the Complaint with prejudice on the following grounds: (1) failure to state a claim upon which relief can be granted for malicious prosecution under 42 U.S.C. § 1983; (2) failure to state a claim for municipal liability against the County; (3) failure to meet the pleading requirements under Rule 8; and (4) with respect to any alleged state law claims, Plaintiff's failure to sufficiently state a cause of action against the County.

Should this Honorable Court deny this motion, the County respectfully requests that it be allowed twenty (20) days from the date of entry of such an order to answer the Complaint.

Dated: White Plains, New York
October 29, 2007

CHARLENE M. INDELICATO
County Attorney
Attorney for County Defendant

/s/
By: Christie L. Magno (CLM 1415)
Assistant County Attorney
of Counsel
(914) 995-5103